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25.09.2015

Regulation on mergers and absorptions of banks in the Republic of Moldova, approved by the DCA of the NBM no.143 of June 2, 2000

Note: The translation is unofficial, for information purpose only

Published in the Official Monitor of the Republic of Moldova, 2000, no.65-67, art.230

Approved by the Decision
of the Council of Administration
of the National Bank of Moldova no.143 of June 2, 2000

REGULATION
on mergers and absorptions of banks in the Republic of Moldova

with amendments and completions of

Decision of the CA of the NBM no.204 of 30.06.2005 (OM of the RM no.98-100 of 22.07.2005)

Decision of the CA of the NBM no.171 of 11.09.2008 (OM of the RM no.180-181 of 03.10.2008)

Decision of the CA of the NBM no.197 of 23.08.2012, (OM of the RM no.237-241 of 16.11.2012)

Decision of the CA of the NBM no.30 of 17.09.2015 (OM no.262-266, art.1824 of 25.09.2015)

I. AUTHORITY, OBJECTIVE AND APPLICATION

1. This Regulation is adopted and issued pursuant to the authority vested in the National Bank of Moldova, based on the Articles 4, 5, 11, and 44 of the Law on the National Bank of Moldova and Articles 1, 7, 13, 16 and 27 of the Law on Financial Institutions.

2. The Regulation is aimed at ensuring the proper functioning of the financial sector of the Republic of Moldova, based on a competitive and market-oriented system, and at preventing any systemic risk.

3. Any merger or absorption of banks shall be carried out only with a prior written permission of the National Bank of Moldova.

4. This Regulation establishes the rules and procedures to be followed by commercial banks involved in the process of merger or absorption.

5. The provisions of this Regulation shall be also applied in the case of selling a substantial share of bank's assets.

II. DEFINITIONS

6. For the purpose of this Regulation the following definitions have been established:

6.1. **Merger** is a reorganization process, which put an end to the existence of two or more banks (merged banks) as a result of which a new bank (successor bank) is founded.

When merging, all the patrimonial rights and obligations of each of the merged bank shall pass, according to the act of transfer and the consolidated balance sheet, to the successor bank.
The non-inclusion in the consolidated balance sheet and in the act of transfer of some contracted obligations, commitments and guarantees issued, etc. of the merged bank does not exempt the successor bank from the fulfillment of these obligations after the registration of merger.
(Item 6.1 amended by the Decision of the CA no.204 of June 30, 2005).

6.2 **Absorption** is a reorganization process, which put an end to the existence of two or more banks (absorbed banks) and transfers fully their rights and obligations to a bank (absorbing bank) that becomes the successor of the rights and obligations of the absorbed bank (banks).
When absorbing, all the patrimonial rights and obligations of the absorbed bank shall pass, according to the act of transfer and the consolidated balance sheet, to the absorbing bank.
The non-inclusion in the consolidated balance sheet and in the act of transfer of some contracted obligations, commitments and guarantees issued, etc. of the absorbed bank does not exempt the successor bank from the fulfillment of these obligations after the registration of absorption.
(Item 6.2 amended by the Decision of the CA no.204 of June 30, 2005).

6.3 **Selling a significant share of bank's assets**, the value of which is more than 10 percent of the bank's assets value according to the balance sheet as of the last reporting date, shall be accomplished with the written permission of the National Bank.
The sale of a significant share of bank's assets, which constitutes from 10 to 50 percent of the value of bank's assets, shall be carried out based on the decision of the bank's Board. .
The sale of a significant share of bank's assets, which constitutes 50 percent of the value of bank's assets, shall be carried out based on the decision of the general meeting of the shareholders.

III. REGULATION OF MERGERS OR ABSORPTIONS

7. The National Bank of Moldova shall approve mergers and absorptions of commercial banks only if the systemic risk will be kept at the lowest possible level and if these mergers and absorptions will foster a strong and competitive financial sector.

8. Banks that are in the reorganization process shall continue making settlements through their correspondent accounts and to honor their obligations until the actual registration in compliance with this Regulation.

9. In case of merger, the National Bank shall issue to the successor bank a license for performing financial activities.
(Item 9 amended by the Decision of the CA no.171 of 11.09. 2008)

10. In case of absorption, the successor bank shall perform its activity after the absorption on the basis of its previous license.
(Item 10 amended by the Decision of the CA no.171 of 11.09.2008)

11. The successor bank may open branches, representative offices and secondary offices based on the ceded bank(s) in compliance with the Regulation on branches, representative and secondary offices of banks, except Chapter II of the Regulation referred to in this item.
(Item 11 amended by the Decision of the CA no.197 of 23.08.2012)

12. When mergering or absorbing, all the rights on performing financial activities and technical procedures of the merged or absorbed banks shall be transferred to the successor bank (except the remedial documents, taking into account the provisions of the third paragraph and the cases when it has been decided otherwise, considering the provisions of the second paragraph of this item).
When issuing the permission according to items 21, 22, the National Bank may take the decision not to transfer to the successor bank certain rights on financial activities and technical procedures, previously given to the banks that participated at the merger (absorption). Such a decision may be taken according to

the provisions of normative acts on the basis of which the corresponding rights have been granted.
The remedial documents issued to the merged or absorbed bank shall refer to the successor bank to the extent that they do not restrict the financial activities previously allowed to one of the merged or absorbed banks.
(Item 12 amended by the Decision of the CA no.204 of June 30, 2005)

IV. DOMINANT POSITION LIMITS ON THE BANKING MARKET

13. To promote a strong and competitive financial sector, the banks shall observe the following limits:

- Total assets of the successor bank in relation to total assets of the whole banking sector shall not exceed 35%;
- The deposits of the successor bank from individuals in relation to total deposits from individuals of the whole banking sector shall not exceed 35%.

14. Observing the dominant position limits on the banking market shall be mandatory for all commercial banks from the Republic of Moldova in their daily activity.
(Item 13 amended by the Decision of the CA no. 30 from September 17, 2015)

V. SYSTEMIC RISK

15. The National Bank shall evaluate the potential for systemic risk taking into consideration the following criteria:
a) Economic grounds for the merger or absorption (purpose, reasons and the impact of reorganization on the financial situation of the successor bank);
b) Reasonable and acceptable operational plan for accomplishing the process of merger or absorption;
c) Compliance of the successor bank with the value of prudential indicators provided for in the normative acts in force of the National Bank. In case a violation of these is detected at the moment of the merger or absorption, the successor bank shall comply its activity with the corresponding sector within one year*, explaining this compliance with concrete activities, reflecting them in the business-plan;
d) The impact of the financial position of the successor bank on the financial system, including its competitors (the current situation and the further development), taking into account the dominant position's limits, the concentration of credits and deposits, effects on the monetary and foreign exchange market.

VI. EXTERNAL AUDIT

16. The National Bank strongly recommends banks in a merger or absorption process to apply to an independent audit firm that is licensed to perform banking audit by the Licensing Chamber and has an auditor that holds a certificate of qualifying auditor of the financial institution.
(Item 16 amended by the Decision of the NBM no.171 of September 11, 2008).

VII. PROCEDURES FOR OBTAINING A PRELIMINARY CONSENT OF NATIONAL BANK OF MOLDOVA

17. In order to obtain a preliminary consent, the applicants shall notify the National Bank about their intention to merge or absorb, presenting the corresponding documents in compliance with the provisions of this Regulation.
a) The management bodies of banks shall present jointly the application for obtaining the preliminary consent for merger or absorption of banks at the latest thirty days before the general meetings of shareholders within which the decision of reorganization is to be taken.

b) The written application and the set of documents, elaborated in compliance with the provisions set for in the Annex no.1 of this Regulation, shall be submitted to the Governor of the National Bank by the chairmen of the Boards of banks intending to go through a merger or absorption process.
c) The National Bank has the right to request additional information, in case the information submitted according to Annex no.1 to this Regulation is insufficient for taking a decision regarding the issuance of a preliminary consent.
(Item 17 amended by the Decision no.204 of June 30, 2005).

18. Within fifteen working days after the registration date of the application, the National Bank shall issue a preliminary consent or reject the application, as provided for in Chapters III – V of this Regulation, informing in writing the applicants and providing the reasons of rejection.

19. The preliminary consent for merger or absorption of banks issued by the National Bank is valid for one year as from the date of its issuance.

VIII. PROCEDURES FOR OBTAINING THE PERMISSION OF THE NATIONAL BANK OF MOLDOVA AND THE REGISTRATION

20. In order to obtain the approval and to register the merger or absorption by making the corresponding entries in the central register of commercial banks, to issue and/or withdraw the licenses to perform financial activities, the applicants shall submit the application and the corresponding set of documents in accordance with the provisions of this Regulation.
(Item 20 amended by the Decision of the NBM no.171 of September 11, 2008)
a) The written application and the respective set of documents, elaborated in compliance with the provisions set for in the Annex no. 2 of this Regulation, shall be submitted to the Governor of the National Bank by the chairmen of the Boards of banks intending to go through a merger or absorption process within fifteen days after the entry into force of the respective decisions of the general meetings of shareholders.
b) The National Bank has the right to request additional information, in case the information submitted according to Annex no.2 to this Regulation is insufficient for taking a decision regarding the issuance of permission and the registration of the merger or absorption.
(Item 20 amended by the Decision of the NBM no.204 of June 30, 2005)

21. Within forty-five working days after the registration date of the application for issuing permission and registration of merger or absorption, the National Bank shall examine the application in accordance with the provisions of the legislation in force and this Regulation.

22. If the application (elaborated according to the Annex no.2) meets the provisions of the legislation in force, the National Bank shall:
a) **In case of merger**

- grant the permission;
- approve the statute of the successor bank;
- withdraw the license to perform financial activities of the merged banks and issue a license to the successor bank to perform financial activities;
- register the successor bank in the central register of commercial banks, simultaneously eliminating it from the register the merged banks;

b) **In case of absorption**

- grant the permission;
- approve the amendments to the statute (if necessary);
- withdraw the license to perform financial activities of the absorbed bank;
- eliminate the absorbed bank from the central register of commercial banks;

(Item 22 amended by the Decision of the NBM no.204 of June 30, 2005)

(Item 22amended by the Decision of the NBM no.171 of September 11, 2008)

IX. SALE OF A SUBSTANTIAL SHARE OF THE BANK'S ASSETS

23. The sale of a substantial share of the bank's assets shall be accomplished in two steps:

- obtaining the preliminary consent of the National Bank at the initiation of the selling process of a significant share of bank's assets;
- obtaining the permission of the National Bank.

24. **In order to obtain the preliminary consent**, the applicants shall notify the National Bank on the sale and purchase intention of a significant share of bank's assets, presenting the corresponding documents in compliance with the Annex no.4 of this Regulation.
a) The management bodies of the applicants shall present jointly the application for obtaining the preliminary consent for the sale and purchase of a significant share of bank's assets at the latest thirty days before the meeting of the body responsible for taking the respective decision.
b) Within fifteen working days as of the date of application's registration, the National Bank shall issue a preliminary consent or reject the application, as provided for in Chapters III – V of this Regulation, informing in writing the applicants and providing the reasons of rejection.

25. In order to obtain the permission for selling or purchasing a significant share of bank's assets, the applicants shall submit the application and the corresponding set of documents in compliance with the Annex no.5 of this Regulation.
a) Within thirty days from the date of registration of the application on the sale and purchase of a significant share of bank's assets, the National Bank shall examine the application in accordance with the provisions of the legislation in force and this Regulation. As a result of the examination, the National Bank shall issue the permission or reject the application, informing in writing the applicants and providing the reasons of rejection.

26. The National Bank has the right to request additional information, in case the information submitted according to Annex no.4 and Annex no.5 of this Regulation is insufficient for taking a decision regarding the issuance of the preliminary consent.
(Item 26 amended by the Decision of the NBM no.204 of June 30, 2005).

X. REASONS FOR REJECTING AN APPLICATION

27. The National Bank may reject the submitted application in the following cases:
a) The process of merger, absorption or sale of a significant share of bank's assets is contrary to Art. 27 of the Law on Financial Institutions;
b) The National Bank is not fully convinced that:

- the bank will comply with the conditions set for in the Law on Financial Institutions;
- the qualification, experience and moral integrity of administrators and shareholders with significant shares are in accordance with the business-plan and the financial activities for which the bank has or will obtain the license;
- the financial situation of the bank will be satisfactory.

c) The dominant position limits on the banking market are not respected;
d) The National Bank is not satisfied with the results of evaluation of the future activity of the bank based on the systemic risk criteria;
e) Not all of the patrimonial rights and commitments (according to the balance-sheet) of the merged or absorbed banks pass to the successor bank;
f) The merger or absorption process is not in compliance with the legislation in force;

g) The set of documents was not submitted in compliance with the provisions of this Regulation.
(Item 27 amended by the Decision of the NBM no.204 of June 30, 2005)

(Item 27 amended by the Decision of the NBM no.171 of September 11, 2008)

XI. FINAL PROVISIONS

28. This Regulation comes into force on the date of its publication in the Official Monitor of the Republic of Moldova.

XII. ENCLOSERS TO THE REGULATION

Annex no. 1 Requirements on the obtainment of a preliminary consent for merger or absorption of banks.

Annex no. 2 Requirements on the obtainment of the permission to merge or absorb banks.

Annex no. 3 Registration form.

Annex no. 4 Requirements to the application for obtaining a preliminary consent for selling a significant share of bank's assets.

Annex no. 5 Requirements to the application for obtaining the permission to sell a significant share of bank's assets.

Annex no. 1

Requirements on the obtainment of a preliminary consent for merger or absorption of bank

I. Application

1. The application, signed by the chairmen of Boards of the banks intending to merge or absorb, as well as the set of original documents shall be submitted to the Governor of the National Bank of Moldova in the state language of the Republic of Moldova. The application shall contain information on the intention to merge or absorb of banks, the name and address of the successor and merged or absorbed banks, other important information in the opinion of applicants.

II. The authorized person

2. The applicants shall appoint in writing the person authorized to represent the interests on behalf of banks in reorganization.

III. The necessary information for presenting an exhaustive application

3. The economic reasoning (indicating the purpose and reasons for merger or absorption) for merger or absorption.

4. The operational plan describing in detail (indicating exact terms) the steps of the merger or absorption

process in compliance with the legislation in force of the Republic of Moldova. there shall be also indicated exact measures to be taken by banks within the reorganization process, including the ways of redemption of stock of the bank's stockholders, who do not agree with the reorganization of the bank.

5. The draft business-plan of the successor bank for the next three years (which will allow having a clear image of successor bank's goals and future operations). When developing this project, the bank shall take into account the criteria set for in the Regulation on banks' licensing (item 12, Annex no.1) and shall include the description of main directions to be accomplished by the successor bank.
(Item 5 amended by the Decision of the NBM no.171 of September 11, 2008)

(Item 5 amended by the Decision of the NBM no.197 of August 23, 2012)

6. Information on the independent audit firm involved in the merger or absorption process, in case of its appointment.
(Item 6 amended by the Decision of the NBM no.204 of June 30, 2005)

Annex no. 2

Requirements on the obtainment of the permission to merge or absorb banks

I. Application

1. The application, signed by the chairmen of Boards of the banks in merger or absorption process, as well as the set of original documents shall be submitted to the Governor of the National Bank of Moldova in the state language of the Republic of Moldova.

II. The authorized person

2. The applicants shall appoint in writing the person authorized to present the interests on behalf of banks in reorganization.

III. The necessary information for presenting an exhaustive application

3. The minutes of the general meetings of shareholders of the bank in reorganization, which shall include the procedure and terms of reorganization, including the procedure for determining the proportion of converting the shares of the bank in reorganization into shares of the bank created through merger or absorption, the decisions of approval of main clauses of the reorganization contract, of approval of founding documents of the successor bank etc.

4. The business-plan of the successor bank for the next three years, approved by the competent bodies of the banks in reorganization, developed in accordance with the provisions of Chapter III item 5 of Annex no. 1 of this Regulation.

5. Information on the notification of bank's creditors regarding the merger or absorption, attaching the proofs of satisfying the requests of the last ones.

6. Authorization of the Privatization and Administration of the State Property Department of the Ministry of Economy and Reforms regarding the merger or absorption of banks, in case the state holds a share in the capital of banks in reorganization.

7. The transfer act, approved by the authorities that took the decisions on merger or absorption of banks, which shall include provisions regarding the succession of rights on all the obligations of reorganized banks

towards all its creditors and debtors, including the contested obligations.

8. The merger or absorption contract approved by the general meetings of shareholders of banks in reorganization, which shall comply with the provisions of Art. 33 of the Law on joint-stock companies and shall determine the order and conditions of reorganization, the procedure and proportions of converting the bank's shares.

9. The new version of the statute or the amendments thereto (in case of their existence), taking into consideration the requirements to the statute set for in the Annex no. 5 of the Regulation on banks' licensing (2 copies).
(Item 9 amended by the Decision of the NBM no.171 of September 11, 2008)
(Item 9 amended by the Decision of the NBM no.197 of August 23, 2012)

10. The internal regulations in compliance with the provisions of paragraph (2) Art. 17 of the Law on Financial Institutions.

11. The list of the successor bank's shareholders. In case of holding a significant share by the shareholder of the successor bank, obtained as a result of aggregation (within the reorganization) of already held shares, these shall comply with the provisions of the Regulation on holding a significant share in the bank's capital and shall submit the respective set of documents in compliance with the mentioned regulation.

12. The list of the successor bank's administrators. In case of assigning new administrators of the successor bank, all of the nominated persons shall correspond to the requirements of the Regulation on requirements to bank's administrators and shall submit the necessary information in compliance with this Regulation.

13. The list of connected or related parties of the successor bank.

14. The registration form of the successor bank elaborated in accordance with the Annex no.3 of this Regulation.

15. In case of changing the name of the successor bank – certificate regarding the new name, issued by the National Terminology Centre of the Republic of Moldova.
(Item 15 amended by the Decision of the NBM no. 197 of August 23, 2012)

16. The written confirmation, signed by the members of the bank's Board, the president and Vice Presidents of the successor bank, to the fact that their business plan had been examined and that they agreed with their role in implementing its provisions.

17. In case of foundation of a successor bank's branch, representative office and secondary office on the basis of the acquired bank (which will cease its activity after the finalization of the reorganization process), the successor bank shall submit the necessary set of documents in order to register the respective branch, representative office and secondary office, which shall be in compliance with Chapter III of the Regulation on branches, representative and secondary offices of banks.
(Item 17 amended by the Decision of the NBM no.197 of August 23, 2012)

18. Information on the accomplishment of the operational plan submitted at the preliminary stage and the documents drawn up in accordance with the measures taken under this plan (except the documents listed above).

Annex no 3

See in: C version [1] or F version [2]

Annex no. 4

Requirements to the application for obtaining a preliminary consent for selling a significant share of bank's assets

I. Application

1. The application, signed by the chairmen of the Boards of the banks intending to sell and purchase a significant share of the selling bank, as well as the set of original documents shall be submitted to the Governor of the National Bank of Moldova in the state language of the Republic of Moldova. The application shall contain information on the intention to sell and purchase a significant share of the selling bank.

II. The authorized person

2. The applicants shall appoint in writing the person authorized to present the interests on behalf of banks intending to sell and purchase a significant share of the selling bank.

III. The necessary information for presenting an exhaustive application

3. The economic reasoning (indicating the purpose and reasons) for selling and purchasing a significant share of the selling bank.

4. The operational plan, describing in detail (indicating exact terms) the steps of the selling and purchasing process of a significant share of the selling bank prior to the permission of the National Bank of Moldova.

5. The draft business-plan of banks intending to sell and purchase a significant share of the bank's assets, for the year when the transaction is to be accomplished, approved by the competent bodies of the corresponding banks. The drafts shall contain provisions on the corresponding transaction and shall allow having a clear image of goals of banks intending to sell and purchase a significant share of the bank's assets. In case the draft business-plans reflects some negative tendencies, the draft business-plans shall be presented for the next year when the transaction of selling and purchasing of a significant share of the selling bank's assets is planned.
The draft business-plan shall include the projected balance sheet of banks as on the first reporting date after the transaction of selling-purchasing will be performed.
In developing this project, the bank shall take into account the criteria set for in the Regulation on banks' licensing (item 12, Annex no.1) and shall include the description of main directions to be accomplished by the bank.

Annex no. 5

Requirements to the application for obtaining the permission to sell a significant share of bank's assets

I. Application

1. The application, signed by the chairmen of the Boards of the banks involved in the process of selling-purchasing a significant share of the selling bank's assets, as well as the set of original documents, shall be submitted to the Governor of the National Bank of Moldova in the state language of the Republic of Moldova.

II. The authorized person

2. The applicants shall appoint in writing the person authorized to present the interests on behalf of banks,

involved in the process of selling-purchasing a significant share of the selling bank's assets.

III. The necessary information for presenting an exhaustive application

3. The minutes of the competent bodies' meetings, within which the decision to sell and purchase a significant share of the bank's assets has been taken, shall contain the procedure and terms of selling and purchasing these, including the procedure of determining the proportion, cost, approval decisions of the primary clauses of the contract for selling and purchasing a significant share of the bank's assets etc.

4. The business-plan of banks intending to sell and purchase a significant share of the bank's assets, for the year when the transaction shall be accomplished, approved by the competent bodies of the banks, drawn up in accordance with the provisions of Chapter III item 5 of the Annex no. 4 of this Regulation.

5. The selling-purchasing contract of a significant share of the selling bank's assets, approved by the competent bodies, which shall determine the order and the conditions of selling of a significant share of the bank's assets and shall set mandatorily the fact that this transaction shall be accomplished only with the permission of the National Bank.

6. The transfer act, approved by the bodies that took the decisions on selling and purchasing a significant share of the selling bank's assets.

7. Information on the accomplishment of the operational plan submitted at the preliminary stage and the documents drawn up in accordance with the measures taken under this plan (except the documents listed above).

See also

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